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such requisites of a railroad can and should be built where they cause least annoyance. *Louisville & Nashville Terminal Co. et al. v. Lellyett*, 114 Tenn. 401, 85 S. W. 889; *Baltimore & Potomac R. Co. v. Fifth Baptist Church*, 108 U. S. 317, 2 Sup. Ct. 719. But where the damage, as in the principal case, is alleged to have been done only by the noise of passing trains and those engaged in switching, and an occasional puff of smoke, the trend of opinions seems to be in accord with the principal case. *Smith v. St. Paul, M. & M. Ry. Co.*, 39 Wash. 355; *Aldrich v. West Side El. Ry. Co.*, 195 Ill. 463, 464; *Rigney v. City of Chicago*, 102 Ill. 70, 71; *Austin v. Augusta Terminal Ry. Co.*, 108 Ga. 671. In the last case the dissenting opinion, written by LEWIS, J., and concurred in by LUMPKIN, P. J., presents the opposite view in an able and interesting manner. On the whole we can hardly consider the question as entirely settled, both sides being supported by competent authority, with the weight probably in favor of the principal case.

EQUITY—ILLEGAL CONTRACT—DUTY OF COURT.—Plaintiff, a referee appointed by the court in a proceeding for the sale of lands of a deceased person's estate, made an agreement with defendant before the sale, whereby defendant should bid for the entire tract and plaintiff should purchase part of the lands from defendant. In this action for specific performance, the defense of illegality not being raised by defendant, *Held*, (EVANS, C. J., dissenting) that specific performance be granted. *Rasch v. Jensen* (1909), — Ia. —, 120 N. W. 662.

It would appear from this case that a court of Equity will not inquire into the illegality of a contract, unless its attention be specially called to it by the parties. The plaintiff's own claim disclosed a clear breach of trust to the landowners, and courts are generally rigidly insistent in not enforcing such contracts. 1 STORY, EQ. JUR., ed. 13, p. 330. POM. CONTRACTS, p. 364. The reason courts set aside or refuse to enforce illegal contracts seems to be one wholly of public policy and not from any regard for the interest of the parties. *Holman v. Johnson*, 1 Cowp. 341; *Valentine v. Stewart*, 15 Cal. 405; POM. CONTRACTS, p. 365; and in *Krcamer v. Earl*, 91 Cal. 112, 27 Pac. 735, the court says: "but in cases of this kind the court is bound to satisfy its own conscience, and cannot shut its eyes to the fact although it is not put in issue. It intervenes not for the sake of the party, but for the law. When the court discovers a fact which indicates that the contract is illegal and ought not to be enforced it will of its own motion instigate an inquiry in relation thereto." The power to declare a contract void as against public policy is used with extreme caution, however. *Equitable Loan & Security Co. v. Waring*, 117 Ga. 599, 62 L. R. A. 93; *Richmond v. Dubuque etc. Co.*, 26 Iowa, 191, 202, and the courts are equally insistent that those contracts which are lawful shall be duly enforced. *Stroemer v. Van Orsdel*, 74 Neb. 132, 103 N. W. 1053, 4 L. R. A. (N. S.) 212. But where, from the pleadings, any illegality appears, that it is the duty of the court to investigate, seems to be clearly settled.

EVIDENCE—PAROL EVIDENCE CONTRADICTING RECITAL AS TO INDORSER'S LIABILITY.—The defendant indorsed a note which recited, "for value received,